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to contain only 235¼ acres. In an action by the plaintiff to have the purchase price abated for a deficiency in the quantity, *held,* that where the quantity is referred to the presumption is that the sale is by the acre unless the language plainly indicates a sale in gross. *McComb* v. *Gilkeson et al.* (1909), — Va. —, 66 S. E. 77.

The court in holding the presumption to be that the sale was by the acre unless the deed plainly indicated a sale in gross followed its own former decisions. *Epes* v. *Sanders,* — Va. —, 63 S. E. 428; *Pack* v. *Whitaker,* — Va. —, 65 S. E. 496. The reason given for the rule being that the court will not favor contracts of hazard. This decision does not seem to find support in other jurisdictions. A great majority of states follow the rule that where there is a sale for a gross sum, of an entire tract of land, by number or other specific description by which its boundaries are made certain, the presumption is that the sale was in gross, although the deed contains a statement as to the number of acres contained in the tract; the reason being that the metes and bounds control. *Mann* v. *Pearson, 2* Johns. 37; *Wakefield* v. *Ross,* Fed. Cas. No. 17050; *Wadhams* v. *Swan,* 109 Ill. 46; *Hess* v. *Cheney,* 83 Ala. 251, 3 South. 791. The presumption is even stronger where the statement of quantity is followed by "more or less," since this implies that the parties are to run the risk of gain or loss in the estimated quantity. *Noble et al.* v. *Googins,* 99 Mass. 231; *Ketchum* v. *Stout,* 20 Ohio 453; *Phillips* v. *Collinsville Granite Co.,* 123 Ga. 830, 51 S. E. 666; *Clark* v. *Scammon,* 62 Me. 47; *Pettit et al.* v. *Shepard,* 32 N. Y. 97. The words "more or less" have been allowed to cover large differences. *Dale* v. *Smith,* 1 Del. Ch. 1, 12 Am. Dec. 64, where there was an excess of 115 acres or more than 50 per cent. *Hall* v. *Mayhew,* 15 Md. 551, where there was a deficiency of 104 acres. *King* v. *Brown,* 54 Ind. 368, where there was a deficiency of 54 acres. Yet in a recent case, *Landrum & Adams* v. *Wells,* — Ky. App. —, 122 S. W. 213, where there was a large deficiency in the quantity of land sold the court held that, where there was a deficiency of 33 1-3 per cent, equity would grant relief, whether the sale was in gross or by the acre, or whether loss occurred through fraud or mistake. That fraud may be shown to rebut the presumption: *McCoun* v. *Delany,* 3 Bibb. 46, 6 Am. Dec. 635; *Tyler* v. *Anderson,* 106 Ind. 185, 6. N. E. 600.

WILLS—CONSTRUCTION—RULE IN SHELLEY'S CASE.—John Westcott, under whose will plaintiffs claim title to an undivided three-fourths interest in the premises in controversy, died in 1865 leaving surviving him a widow and several children. The provisions of his will, which was duly probated, so far as they affected title to the premises in controversy, were that the widow should have a life estate therein, and that said premises should pass at her death to his son Charles Alfred Westcott, "to have and to become possessed of the same at the death of my wife, Anna Westcott, and to hold the same during his, Charles Alfred Westcott's natural life." Other parcels of land were devised in similar terms to his other children and the will contained this concluding paragraph: "My said children are to have the use, rents, and profits of their portions of said lots * * * respectively during the terms of

their natural lives. They are to have no power to convey or dispose of the same, their respective portions, for a longer term than during their natural lives respectively. At the death of my children aforesaid, their respective portions of said lots descend to their heirs respectively, said heirs to have absolute title unto their respective portions." Plaintiffs here are the children of Charles Alfred Westcott. Defendants are the heirs of one Meeker to whom Charles Alfred Westcott had attempted to convey the lands in fee. In this action to quiet title, *held,* the rule in Shelley's Case did not apply and Charles Alfred Westcott took only a life estate with a contingent remainder over to his heirs, which remainder could not vest until the devisee's death. *Westcott et al.* v. *Meeker* (1909), — Iowa —, 122 N. W. 964.

After many years of uncertainty, it was decided that the rule in Shelley's Case was a rule of property in Iowa. *Doyle* v. *Andis,* 127 Iowa 36, 102 N. W. 177, 69 L. R. A. 953. In an earlier case the court, in construing the same will involved in the principal case, as applied to another parcel of land devised to another child by similar language, held that the rule in Shelley's Case did not apply to the facts of the case then under consideration. *Westcott* v. *Binford,* 104 Iowa 645, 74 N. W. 18, 65 Am. St. Rep. 530. The court now holds in the principal case that *Westcott* v. *Binford* can stand consistently with *Doyle* v. *Andis,* on the ground that the testator's intention should govern in the construction of a will even as against the construction which would be given under the rule in Shelley's Case. There are expressions in judicial opinions and text books which seem to support this view. *Ware* v. *Minot,* 202 Mass. 512, 88 N. E. 1091; JONES, REAL PROPERTY, § 606; UNDERHILL, WILLS, § 658. It would seem, however, that if the rule is to be recognized as a rule of property it should apply in cases like this. As was said by Lord McNaughten in *Van Grutten* v. *Foxwell,* 66 L. J. Q. B. 745, "It is constantly made a matter of complaint that the rule disappointed the intention, as if that were not its very end and purpose; as if it had not been at the outset 'levelled against the views of the parties'." When applied in its integrity it certainly can defeat the testator's intention as most clearly expressed in his will. All the English decisions are to this effect. See also the recent cases of *Deemer* v. *Kessinger,* 206 Ill. 57, and *McCann* v. *Barclay,* 204 Pa. St. 214, following many cases of the same sort. (In 1907 the rule in Shelley's Case was abolished in Iowa by Act. 32nd, Gen. Assem., p. 157, c. 159.)